STATE OF OHIO

OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF INVESTIGATION

AGENCY: OHIO DEPARTMENT OF ADMINISTRATIVE SERVICES
FILE ID NO.: 2018-CA00016
DATE OF REPORT: FEBRUARY 12, 2019

The Office of the Ohio Inspector General ...
The State Watchdog

"Safeguarding integrity in state government"

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Randall J. Meyer
Ohio Inspector General

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REPORT OF INVESTIGATION

FILE ID NUMBER:	2018-CA00016
AGENCY:	Ohio Department of Administrative Services
BASIS FOR INVESTIGATION:	Complaint
ALLEGATIONS:	Failure to Comply with State Law and/or Regulations Failure to Enforce Rules or Policies Failure to Comply with State or Department Rules, Procedures or Policies Failure to Exercise Adequate Oversight of Agency/Departmental Functions/Activities
INITIATED:	March 6, 2018
DATE OF REPORT:	February 12, 2019

INITIAL ALLEGATION AND COMPLAINT SUMMARY

On February 17, 2018, the Office of the Ohio Inspector General received a complaint concerning the state's Encouraging Diversity, Growth and Equity program (EDGE) and how it was being administered by the Ohio Department of Administrative Services. Specifically, the complainant questioned how CTL Engineering, Inc., a local engineering firm whose "total local billings were $14.5 million and company-wide was $35.5 million in 2016," qualified as a disadvantaged business and continued to be recertified into the EDGE program. On March 6, 2018, the Office of the Ohio Inspector General opened an investigation.

BACKGROUND

The Ohio Department of Administrative Services (ODAS) is responsible for providing state agencies with services pertaining to information technology systems, personnel, the procurement of goods and services, real estate, collective bargaining, and equal opportunity. More than three-quarters of the agency's operating budget comes from fees that state agencies pay for these services. Most of the remaining portion comes from the general revenue fund (GRF). A small portion is provided through federal grants. ODAS consists of six divisions, which includes the Equal Opportunity Division.[1]

Equal Opportunity Division

It is the mission of the Equal Opportunity Division (EOD) to serve, support, and find solutions for Ohioans by ensuring equal opportunity to and fair treatment in government contracting and state employment. The division strives to achieve its mission by implementing and enforcing the state's affirmative action and equal employment opportunity policies, and by implementing and monitoring the state's procurement preference programs for minority-owned, women-owned, and socially and economically disadvantaged businesses. The division consists of four units, which includes the Business Certification and Compliance Unit.

[1] Legislative Service Commission (August 2017). *Greenbook. LSC Analysis of Enacted Budget, Department of Administrative Services*; http://www.lsc.ohio.gov/documents/budget/132/MainOperating/greenbook.DAS.PDF.

Business Certification and Compliance Unit

The mission of the Business Certification and Compliance Unit (BCCU) is to ensure equal opportunity access to and fair treatment in government contracting. The unit strives to achieve its mission by maximizing contracting opportunities through certification of minority-owned, women-owned and socially and economically disadvantaged businesses, certifying veteran-owned businesses, and enforcing the affirmative action laws and regulations required of contractors doing business with the State of Ohio. BCCU is responsible for implementing several certification and compliance programs, which includes the Encouraging Diversity, Growth and Equity (EDGE) program.[2]

Encouraging Diversity, Growth and Equity program

The State of Ohio's EDGE program establishes an annual goal for state agencies, boards and commissions as well as guidelines for state universities in awarding contracts to certified EDGE businesses. The EDGE program is designed to assist socially and economically disadvantaged businesses in obtaining state government contracts in the following areas: construction, architecture and engineering; professional services; goods and services; and information technology services. The State of Ohio developed the program because it recognized the need to encourage, nurture and support the growth of economically and socially disadvantaged businesses to foster their development and increase the number of qualified competitors in the marketplace.[3]

Applicable Laws and Policies

Ohio Revised Code (ORC) §123.152 states in part:

> (A) …"EDGE business enterprise" means a sole proprietorship, association, partnership, corporation, limited liability corporation, or joint venture certified as a participant in the encouraging diversity, growth, and equity program by the director of administrative services under this section of the Revised Code.

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[2] ODAS website located at http://www.das.ohio.gov/Divisions/Equal-Opportunity.
[3] ODAS Encouraging Diversity, Growth and Equity Recruitment Guide.

(B) The director of administrative services shall establish a business assistance program known as the encouraging diversity, growth, and equity program and shall adopt rules in accordance with Chapter 119 of the Revised Code to administer the program that do all of the following:

(3) Establish a system of certifying EDGE business enterprises based on a requirement that the business owner or owners show both social and economic disadvantage based on the following, as determined to be sufficient by the director:

(a) Relative wealth of the business as well as the personal wealth of the owner or owners of the business.

(c) Economic disadvantage based on economic and business size thresholds and eligibility criteria designed to stimulate economic development through contract awards to businesses located in qualified census tracts.

(4) Establish standards to determine when an EDGE business enterprise no longer qualifies for EDGE business enterprise certification.

Ohio Administrative Code (OAC) §123:2-16 states in part:

(D) 'Economically Disadvantaged Business' means a business (including its affiliates) at least fifty-one percent owned and controlled by an economically disadvantaged person or persons and the size of the business does not exceed the definition of a "small business" as defined by the United States small business administration.

(1) To be a small business as defined by the United States small business administration standards (found in 13 C.F.R. 121) only one main North American industry classification system code is used to determine the company's size standard. The North American industry classification system code (the code in which the majority of the company's gross sales are generated within) as identified by EOD at the time of certification or recertification is the only code used to determine a company's size standard as identified in 13 C.F.R. Part 121.

(E) ‘Economically Disadvantaged Person’ means a person whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar businesses that are not socially disadvantaged. Economic disadvantage shall be based on:

> (1) … The personal net worth of the person at the time of initial application for certification as an EDGE business enterprise must be less than two hundred fifty thousand dollars, and must not exceed seven hundred fifty thousand during any time of certification as an EDGE business enterprise …

OAC §123:2-16-03 Certification of Business Structure

(J) The maximum amount of time a business or business owner may participate in the EDGE public contracts assistance program as a certified business is ten years.

OAC §123:2-16-05 Recertification

(I) The maximum amount of time a business or business owner may participate in the EDGE program as a certified business is ten years.

OAC §123:2-16-06 Decertification and revocation

(A) The state equal employment coordinator may decertify or revoke a certification or recertification issued pursuant to this chapter, if the coordinator determines that a certified EDGE business enterprise does not meet the participation criteria set forth in this chapter. The decertification or revocation may be the result of a finding by the coordinator for any of the following reasons, including:

> (5) The EDGE business enterprise is no longer determined to be economically or socially disadvantaged;

ODAS Records Retention Schedule – Series No.: 11001515, Agency Series No.: EDGE-1, adopted in accordance with Ohio Revised Code §121.211, states in part:

> Retain vendor folder for duration of participation in the EDGE program (or denial process) plus two (2) years, then transfer to offsite for three (3) years, then destroy.

> … Working documents include: EDGE application, certificates, cross certification application, recertification affidavits, reports, hearings and denials …

INVESTIGATIVE SUMMARY

On March 1, 2018, the Office of the Ohio Inspector General requested that ODAS provide the complete EDGE file for CTL Engineering, Inc. (CTL). Shortly thereafter, on March 9, 2018, investigators received and reviewed CTL's EDGE certification file. The EDGE file provided by ODAS contained a single recertification affidavit from March 20, 2007. Because CTL was a current EDGE-certified business and was re-certified at least as far back as March 2007, investigators determined that CTL exceeded the EDGE program's 10-year eligibility restriction as stipulated by Ohio Administrative Code (OAC). Investigators also recognized that since CTL's 2007 affidavit was a recertification and EOD typically recertifies EDGE businesses for two years, CTL was likely certified in 2005, if not earlier.

As a result of this initial review, the Office of the Ohio Inspector General expanded its investigation to include a specific review of the 10-year eligibility restriction for all EDGE certified businesses. On March 12, 2018, investigators requested a list of all EDGE-certified businesses from ODAS, to include business names, dates of original certification, dates of last recertification, and dates of expiration. On March 13, 2018, during a meeting between the Office of the Ohio Inspector General and ODAS on an unrelated matter, ODAS conveyed that they recently launched an internal inquiry into the EDGE 10-year eligibility restriction.

On March 21, 2018, investigators received a spreadsheet of all EDGE-certified businesses, both current and expired from ODAS. The spreadsheet revealed that CTL was originally certified into the EDGE program on June 3, 2003. The spreadsheet further indicated that CTL's last recertification occurred on March 17, 2017, thereby extending its new expiration date to March 17, 2019. This information confirmed that CTL had been in the EDGE program for nearly 15 years with no apparent breaks in certification.

CTL Engineering - EDGE File Review

The Office of the Ohio Inspector General requested CTL's original 2003 EDGE application from ODAS; however, investigators were later informed by EEO Program Manager Todd McGonigle that CTL was "grandfathered" into the EDGE program on June 3, 2003, and had an original expiration date of June 3, 2005. According to a McGonigle email,

> After Executive Order 2002-17T [**(Exhibit 1)**] was signed on December 20, 2002 EOD was directed to begin cross certifying (grandfathering) any of [the] companies with the status named in Executive Order 2002-17T (item 5A). By the time processes were put into place, like IT upgrades, EDGE forms, updated forms, to reflect EDGE, etc. EOD was able to cross certify (grandfather) on June 3, 2003.

Following additional records requests, EOD located and provided to the Office of the Ohio Inspector General copies of all subsequent CTL recertification affidavits they maintained. Investigators discovered that several of the recertification affidavits had either incomplete information or information that should have disqualified CTL from EDGE certification based on criteria set forth in the OAC. For example, according to the 2005 EDGE recertification affidavit, 10 of the 13 questions on the form provided by EOD for CTL were left blank. On this same affidavit, the question regarding whether the applicant's personal net worth was less than $750,000 was answered "No" by CTL. In addition, the asset and liability fields on the personal net worth statement were all blank, which precluded any verifying of the applicant's claimed net worth.

According to OAC, an applicant with a net worth of over $750,000 would be disqualified from EDGE recertification; however, investigators learned that EOD recertified CTL for an additional two years. The affidavit question addressing "last year's sales" was also left blank. Prior year sales are critical for determining a business's net worth, which directly impacts a business's EDGE program eligibility. Further, according to the OAC from this time period, a business's net worth could "not exceed the average net worth of comparable businesses." There was no indication in the certification files that EOD completed any such comparisons.

Lastly, the 2005 recertification affidavit was certified by a CTL employee as the “owner,” not the actual disadvantaged business owner, which is contrary to the certification statement on the affidavit. The certification statement states in part,

> The undersigned swears that the foregoing statements are true and correct. The undersigned further acknowledges and understands that any misrepresentation of myself or my company as owning, controlling, operating, or participating in a Encouraging Growth & Equity enterprise …
>
> … By telling us your last 4 digits of your Social security number, your last and first name, and your date of birth, you are certifying that you are the person identified by those items. If you are not that person, you are not authorized to submit this application ...

There was no indication in the certification file whether EOD reviewed or approved a CTL employee certifying the affidavit on behalf of the disadvantaged business owner prior to recertifying CTL.

In addition, a review of CTL’s 2007 EDGE recertification affidavit also revealed that key information for determining personal net worth was not included. The applicant provided that his personal net worth was less than $750,000; however, the affidavit, rather than requiring the personal financial statement, like all other affidavits, simply asks if the applicant “would like to complete a personal financial statement.” In this case the applicant neither answered this question nor provided any detailed personal financial information for review.

CTL’s 2009 EDGE recertification affidavit could not be located by EOD and therefore could not be reviewed by investigators for completeness or inaccuracies. CTL’s 2011 through 2017 EDGE recertification affidavits (four total) were all complete; however, the paragraphs containing the certification statement that stated, in part, that “the undersigned swears that the foregoing statements are true and correct …” was missing. The EDGE recertifications submitted for 2011 through 2017 were also all prepared by CTL employees and do not indicate whether the disadvantaged business owner either reviewed or affirmed the information. Again, there was no indication in the certification files that this issue was either identified or addressed by EOD prior to recertifying CTL.

Investigators also determined that as of February 2016, a change to the OAC required EOD to utilize small business size standards when determining if a business is an "economically disadvantaged business" at the time of EDGE certification or recertification. This required assessment directly impacts a business's eligibility for the program. Specifically, EOD is required to verify that a business does not exceed the definition of a "small business" as defined by the United States Small Business Administration. Further, EOD is required to collect one main North American Industry Classification System code (NAICS) and utilize it in conjunction with a business's gross sales to a determine a company's size threshold. The NAICS code to consider is identified as the code in which the majority of the company's gross sales are generated.

Investigators reviewed CTL's 2017 EDGE recertification affidavit and found neither any reference to NAICS codes nor any notations regarding small business size standard testing. However, investigators did locate CTL's self-reported business sales information for 2017 on their recertification affidavit. Investigators utilized the United States Small Business Administration's online size standards tool[4] and applied CTL's self-reported sales information in conjunction with the most relevant NAICS codes to calculate several possible small business size standards. Investigators chose NAICS codes they determined to be most representative of CTL's likely business activities. Investigators determined that CTL ***exceeded*** the small business size standards in all seven categories tested for 2017. The tables below summarize the Office of the Ohio Inspector General's small business size standards testing and CTL's self-reported annual revenue per available recertification paperwork:

SBA Size Standard Results (NAICS: Professional, Scientific and Technical Services – Sector 54)

NAICS Code	NAICS Category	Annual Revenue Limits	Does CTL Currently Exceed SBA Size Standards?
541310	Architectural Services	$7,500,000	Yes
541330	Engineering Services	$15,000,000	Yes
541350	Building Inspection Services	$15,000,000	Yes
541360	Geophysical Surveying and Mapping Services	$15,000,000	Yes

[4] U.S. Small Business Administration size standards tool located at https://www.sba.gov/size-standards/.

541370	Surveying and Mapping (except Geophysical)	$15,000,000	Yes
541380	Testing Laboratories	$15,000,000	Yes
541690	Other Scientific and Technical Consulting Services	$15,000,000	Yes

CTL Engineering, Inc. (self-reported annual revenue per ODAS recertification paperwork)

Year	Annual Revenue	Notes
2003	N/A	no certification paperwork exists per ODAS
2005	N/A	no annual revenue listed on recertification affidavit provided by ODAS
2007	$13,737,160	
2009	N/A	no recertification paperwork exists per ODAS
2011	$28,000,000	
2013	$31,300,000	
2015	$35,500,000	
2017	$35,532,144	

In addition, since the standard for determining disadvantaged business status changed in 2016, investigators reviewed all pre-2017 recertification applications to determine if EOD compared CTL's average net worth to "the average net worth of comparable businesses" as required by the OAC at the time. Investigators found no indication in the certification files that EOD completed any such comparisons.

EDGE Recertification Analysis – ***Conducted by the Office of the Ohio Inspector General***

The ODAS-supplied spreadsheet of all EDGE-certified businesses consisted of 4,721 businesses that have participated in the EDGE program since its inception. Investigators conducted a series of steps to limit the analysis to those businesses that were likely beyond the 10-year eligibility restriction. First, investigators removed all entries for businesses that either did not seek recertification after their initial certification or were still covered under their initial certification period. These entries were identified with an "N/A" in the recertification date field of the spreadsheet. This action reduced the test sample to 2,124 businesses. Next, investigators utilized a cut-off date of March 31, 2018. This action limited the test sample to businesses with an original certification date of March 31, 2008 or earlier. This action resulted in a final test sample of 811 businesses that would be beyond the 10-year eligibility restriction if they had continued to seek consecutive recertification from the date of their original certification through March 31, 2018. The following is a summary of the final test sample analysis:

- 539 of the 811 (66 percent) ***were beyond*** the 10-year eligibility restriction ***at some point prior to their listed expiration date***; the remaining 272 exited the program prior to reaching the 10-year eligibility restriction;

- 357 of the 539 (66 percent) ***are currently beyond*** the 10-year eligibility restriction; the remaining 182 have since exited the program but again were at one point beyond the 10-year eligibility restriction; [5]

- 377 of the 539 (70 percent) ***were beyond*** the 10-year eligibility restriction ***at the time ODAS/EOD recertified the businesses***;

<u>EDGE Recertification Analysis</u> – ***Conducted by the Equal Opportunity Division***

On May 3, 2018, investigators were informed by McGonigle that EOD conducted their own 10-year eligibility analysis of all EDGE certifications based on cumulative days in the program. Investigators reviewed EOD's analysis and identified the following concerns that affected both the accuracy and reliability of the results.

- EOD did not track or utilize any original certification dates from June 3, 2003; even though this date was when many businesses were "grandfathered" into the program. This was also the original certification date that EOD provided to the Office of the Ohio Inspector General for its analysis. For example, CTL was grandfathered into the program on June 3, 2003; however, EOD's spreadsheet identifies CTL as entering the program on June 7, 2011. This is eight years after CTL had actually entered the EDGE program.

- In addition, other start date discrepancies were identified between what EOD provided to the Office of the Ohio Inspector General for analysis and what EOD utilized in their

[5] This number is based on the March 31, 2018, cutoff date. Additional businesses are scheduled to reach the 10-year eligibility restriction in the months following March of 2018.

analysis. For example, EOD identified a business as entering the program in 2008 as opposed to 2005.

- EOD's spreadsheet included dates from as far back as the year 2000. This predates Executive Order 2002-17T that established the EDGE Program Initiative. Also, the Office of the Ohio Inspector General did not receive from EOD any records prior to the date of June 3, 2003.

- EOD incorrectly identified some businesses as expired in their analysis when the businesses were currently certified in the EDGE program. For example, EOD's analysis identified a business as expired in 2017, but the business was currently certified in 2018 and was not set to expire until 2019.

- EOD's analysis contained 4,045 unique business entries for analysis. The list EOD provided to the Office of the Ohio Inspector General for analysis contained 4,721 unique business entries.

On April 24, 2018, investigators discovered that the Ohio Office of Budget and Management Training Academy in conjunction with ODAS facilitators conducted a web-based training for new fiscal employees that addressed, in part, the EDGE program. The EDGE portion of the presentation materials began with,

> Since its inception in 2003, the EDGE program has:
>
> • Certified more than 4,700 businesses.
>
> • Increased state expenditures with EDGE-certified businesses from more than $75 million in Fiscal Year 2004 to more than $299 million in Fiscal Year 2017.

The presentation materials provided further support that the Office of the Ohio Inspector General's review of 4,721 unique business entries for analysis was likely accurate and EOD's review of 4,045 unique business entries was incorrect. The presentation materials went on to state,

> With this success, a number of EDGE businesses are reaching the maximum 10-year time limit for program participation or they qualify as program graduates having grown their

> businesses over time, exceeding the net-worth or business-size threshold limits that had designated them as "economically disadvantaged" as set by the law establishing this program. As businesses graduate or reach maximum participation time for EDGE, program resources are freed up to assist more disadvantaged businesses.
>
> What these graduation and participation time limits mean to state agencies is that some of businesses you have traditionally done business with to obtain the EDGE goal may no longer be a part of the program. As long as an EDGE-certified business does not withdraw its certification or have its certification revoked during the life of a contract, a state agency entering into a contract with an EDGE-certified business will be granted credit toward its EDGE goal for the EDGE business's performance on the contract should the business graduate from the program or be term-limited during the term of the contract.
>
> For those businesses that are dual certified into both the EDGE and MBE programs, this policy has no impact on their MBE certifications or an agency's ability to receive MBE credit for their services. While implementation of this graduation and time limit process has not yet begun, it is forthcoming. EOD will be notifying agencies soon with the suppliers you may be currently doing business that will be impacted.

The final paragraph above clearly states that "… this graduation and time limit process has not yet begun …", which further supports that EOD had not been enforcing the 10-year eligibility restriction as required by the OAC.

Interview: Todd McGonigle, EEO Program Manager, Business Certification & Compliance Unit

On May 3, 2018, investigators interviewed EEO Program Manager Todd McGonigle to discuss the processes and procedures utilized within the Business Certification and Compliance Unit for EDGE program compliance. McGonigle provided that the state's EDGE participation goal is five percent and it effects all state agencies except for all four-year colleges and the Ohio School Facilities Commission (OFCC). McGonigle further explained that EDGE participation is an aspirational goal and there are no penalties for missing the five-percent goal. In addition, EDGE participation is all open-market and there are no set-aside requirements or agency usage projections like the MBE program.

While discussing day-to-day EOD operations and the number of analysts who perform those operations, McGonigle stated that for the last several bienniums (at least four or five), EOD's staff has been continuously cut. After former EEO Coordinator Greg Williams was appointed, he (Williams) combined two units within EOD, which were the Construction Compliance and MBE/EDGE programs. McGonigle noted that, at that time, EOD had about four employees to cover the entire state and by combining the two units Williams was able to gain a few more employees, but they also picked up additional duties of conducting project reviews. McGonigle further explained that EOD was currently at a "very low level of employees" to conduct all its project and MBE, EDGE, and VBE[6] reviews.

Since OAC requires that the personal net worth of an EDGE applicant at the time of initial application must be less than $250,000 and must not exceed $750,000 during any time of certification, investigators inquired how EDGE applicants substantiate personal economic disadvantage to EOD. McGonigle stated that supporting documentation provided during the application process serves as support for the economic disadvantage piece. Specifically, applicants are required to submit a net worth statement at the end of the application and they must affirm that what they submitted was true and accurate. McGonigle went on to state that EOD does not have the authority to pull an applicant's bank records, IRA records, or mortgage records. However, investigators pointed out that EOD does have the authority to request all of the financial records mentioned above. McGonigle agreed, but then added that EOD can only request the information and does not have the authority to compel applicants to provide it. These financial records are key to confirming the accuracy and completeness of an EDGE application. While EOD may not be able to compel applicants to supply the requested records, EOD can deny an application for failing to provide adequate supporting documentation. McGonigle again reiterated that the applicants affirm that the information they provided was true and accurate. McGonigle added that "if the applicant chose to lie to us … um, we wouldn't be able to really identify, you know, that they have a summer home in Florida … you know." When asked again

[6] Veteran-owned Business Enterprise.

to clarify how EOD enforces the net worth limits, McGonigle stated, “we basically rely on their affidavit that they’re supplying … .”

In addition to personal economic disadvantage, OAC also defines what it means to be an economically disadvantaged business. Investigators were interested in how EOD determined and tracked if a business was economically disadvantaged based on OAC requirements. From 2004 through 2015, OAC defined an economically disadvantaged business as 51-percent owned by an economically disadvantaged person, and the business’s net worth could not exceed the average net worth of comparable businesses. Investigators found no evidence that EOD conducted any comparisons of average business net worth. In 2016, the OAC was revised and required that to be considered an economically disadvantage business, the size of the business could not exceed the definition of a “small business” as defined by the United States Small Business Administration. This included the collection of one main North American Industry Classification System code (NAICS), which when utilized in conjunction with the average gross sales over a period determined the small business size standard.

When asked about how EOD was verifying small business size standards as defined in the OAC, McGonigle stated, “as far as enforcement of the size standards, uh when it comes to either the NI … NAICS code, umm we were not enforcing that at the particular time because of some of the items I had discussed with you … .” The issues McGonigle was referring to were systems not tracking and maintaining the information, systems not talking to each other, and other technical issues. McGonigle went on to say, “so we basically were not enforcing the size limitations umm as they were stated up until, until we’ve got into this final piece.”

When investigators inquired how EOD identifies and confirms the 10-year eligibility restriction during the recertification process, McGonigle stated that the software systems EOD uses are not sophisticated enough to track that information. McGonigle explained that EOD has had to change systems several times over the years and the “systems don’t talk to each other.” McGonigle added that EOD currently tracks certification dates via a spreadsheet. For example, if a business’s EDGE certification period was approved for two years and the business reapplies one month early, then EOD would count that business’s initial EDGE certification period as 23 months, not 24 months. McGonigle explained that EOD determined that the period of time a business is considered EDGE certified is calculated accumulatively by the total amount of time the business is certified, not consecutively from certification to recertification; "so a company can come in and out and that makes it very difficult … to track it 'cause our systems don't track that … ." McGonigle added that that scenario is repeated until the number of days a business was EDGE certified totaled 10 years.

Since McGonigle explained that EOD currently tracks the 10-year eligibility restriction via a spreadsheet, investigators inquired how EOD tracked the information earlier when the first EDGE businesses were approaching potential removal from the program based on the 10-year eligibility restriction. McGonigle explained that EOD had no "meaningful, real-time" systems to track the 10-year eligibility restriction. McGonigle explained that EOD's administration was struggling with several issues like defining what key terms such as graduation, non-disciplinary, and time-limited (consecutive vs. cumulative) meant. McGonigle stated that moving forward, EOD had decided that the time a business is in the EDGE program would be calculated on a cumulative basis. Investigators determined that no businesses were subjected to the 10-year eligibility restriction because EOD was not enforcing it. McGonigle also noted at the conclusion of his interview that "… I just think that umm you know we're taking actions now once we've got all these decisions made and umm kinda everybody's in agreement as to how to proceed. So, we're taking actions now to correct any deficiencies noted in the past. And uh, we're moving on that pretty quickly."

In a May 11, 2018, follow-up, investigators questioned McGonigle as to why CTL's federal business tax returns were not included in CTL's EDGE recertification files. Based on a review of the ODAS-published EDGE Recruitment Guide, investigators noted that these tax returns were required. The EDGE Recruitment Guide specifically stated that "… the applicant must complete an online Recertification Affidavit through the Ohio Business Gateway and provide last year's business federal tax returns. Only complete applications, which include tax returns, will be reviewed." As noted earlier, business tax returns include prior year sales that are critical for determining a business's net worth, which directly impact a business's EDGE program eligibility.

On May 24, 2018, McGonigle responded via written correspondence that,

> … the statement in the EDGE Recruitment Guide (Page 7) is incorrect. OAC §123:2-16-05 – Recertification has no requirement to provide last years' business federal tax returns. This correction will be made in future printing with the addition of the requirement to submit the business's last three federal tax returns to confirm the business's size standard.

McGonigle's assertion that OAC §123:2-16-05 has no requirement to provide last year's business federal tax returns is incorrect. The section states that "EOD shall use the criteria set forth in rules §123:2-16-02, among others, which states that EOD should be provided 'when applicable, previous two years of business federal tax returns to include all schedules'." EOD has always been required to either determine whether a business's net worth exceeded the average net worth of comparable businesses or if an applicant's business met specified small business size standards. Tax returns are critical supporting documents utilized to assess a business's net worth and EOD failed to enforce or calculate either of these standards. Investigators also noted a lack of supporting documentation, over multiple recertification years, during the review of CTL's EDGE files.

EOD/BCCU Standard Operating Procedure Manual

Investigators requested copies of the EOD/BCCU Standard Operating Procedures Manual and training materials that covered the EDGE program. Investigators were provided several training presentations and a copy of a standard operating procedures manual that was dated effective January 16, 2018. After a review of the standard operating procedures manual, investigators learned of a previous version of the manual dated December 15, 2017. Investigators requested all previous versions of the manual and the official effective dates to better understand how long a documented standard process had been in place for the program.

Since the EDGE program was established by Executive Order in December of 2002, investigators expected to receive early versions of the standard operating procedures manual. However, in a written response dated June 19, 2018, McGonigle provided two additional versions of the manual and stated, "the manual was developed overtime [sic] beginning in

January 2016." Based on this date, the manual's development began well over a decade after the EDGE program was established. McGonigle continued that,

> … the manual was created in stages with the first part of the manual issued around July 2017 (this was phase 1). The reason for the rollout in stages was not to overwhelm the staff and to find issues and challenges to the interpretations of terms and processes. The final completed version was issued on January 2, 2018. Since January 2, 2018 there has been some revisions as noted in the revision log.

CONCLUSION

On February 17, 2018, the Office of the Ohio Inspector General received a complaint concerning the state's Encouraging Diversity, Growth and Equity (EDGE) program and how it was being administered by the Ohio Department of Administrative Services. Specifically, the complainant questioned how CTL Engineering, Inc., a local engineering firm whose "total local billings were $14.5 million and company-wide was $35.5 million in 2016," qualified as a disadvantaged business and continued to be recertified into the EDGE program. On March 6, 2018, the Office of the Ohio Inspector General opened an investigation. The investigation determined:

The Office of the Ohio Inspector General determined that over several years the Ohio Department of Administrative Services, Equal Opportunity Division repeatedly recertified CTL Engineering, Inc., among other businesses, into the Economic Diversity, Growth, and Equity (EDGE) program disregarding the EDGE program's 10-year eligibility restriction on all applicable businesses. In these instances, the Ohio Department of Administrative Services, Equal Opportunity Division failed to comply with Ohio Administrative Code §123:2-16-03, which states in part that "the maximum amount of time a business or business owner may participate in the EDGE public contracts assistance program as a certified business is ten years."

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

The Office of the Ohio Inspector General determined that over several years the Ohio Department of Administrative Services, Equal Opportunity Division repeatedly recertified CTL

Engineering, Inc. into the Economic Diversity, Growth, and Equity (EDGE) program without determining if CTL's net worth exceeded the average net worth of comparable businesses and whether CTL's size exceeded the small business size standards as defined by the United States Small Business Administration and adopted by the State of Ohio. In these instances, the Ohio Department of Administrative Service, Equal Opportunity Division failed to comply with Ohio Administrative Code §123:2-16-01, which currently states in part that an,

> Economically Disadvantaged Business means a business (including its affiliates) at least fifty-one percent owned and controlled by an economically disadvantaged person or persons and the size of the business does not exceed the definition of a "small business" as defined by the United States small business administration,

and previously stated that "the business net worth does not exceed the average net worth of comparable businesses."

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

The Office of the Ohio Inspector General also determined that the Ohio Department of Administrative Services, Equal Opportunity Division did not maintain all CTL Engineering, Inc. certification documents for the Economic Diversity, Growth, and Equity (EDGE) program. In these instances, the Ohio Department of Administrative Services, Equal Opportunity Division failed to comply with ODAS Records Retention Schedule – Series No.: 11001515, Agency Series No.: EDGE-1, adopted in accordance with Ohio Revised Code §121.211, which states that "records in the custody of each agency shall be retained for time periods in accordance with law establishing specific retention periods, and in accordance with retention periods or disposition instructions established by the state records administration."

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

RECOMMENDATION(S)

The Office of the Ohio Inspector General makes the following recommendations and asks that the Ohio Department of Administrative Services respond within 60 days with a plan detailing how these recommendations will be implemented. The Ohio Department of Administrative Services should:

1. Review and revise written policies and procedures to ensure that the Ohio Department of Administrative Services, Equal Opportunity Division adequately documents, tracks, and applies the 10-year eligibility restriction as required by Ohio Administrative Code §123:2-16-03.

2. Define and document how EOD will calculate what constitutes a 10-year period (consecutive vs. cumulative) for the purposes of enforcing the 10-year eligibility restriction as required by Ohio Administrative Code §123:2-16-05.

3. Based on errors identified in the Equal Opportunity Division's analysis of the 10-year eligibility restriction, conduct another internal review of the EDGE program to determine which EDGE-certified businesses are ineligible for the program based on the 10-year eligibility restriction as required by Ohio Administrative Code §123:2-16-03.

4. Review and revise written policies and procedures to ensure that the Ohio Department of Administrative Services, Equal Opportunity Division not only collects and documents the North American Industry Classification System (NAICS) code from EDGE applicants at both the initial certification and recertification stages, but also utilizes the NAICS code to comply with the small business size standards as required by Ohio Administrative Code §123:2-16-01.

5. Complete an internal review of the EDGE program to determine EDGE-certified business eligibility for the program based on the small business size standards as required by Ohio Administrative Code §123:2-16-01.

6. Based on the results of the internal reviews identified above (see recommendations #3 and #5), initiate decertification or revocation proceedings for those EDGE program participants found to be ineligible based on either the 10-year eligibility restriction or on their no longer meeting the "economically disadvantaged business" requirement as outlined in Ohio Administrative Code §123:2-16-01, §123:2-16-03, and §123:2-16-06. Report these to the Office of the Ohio Inspector General within the 60-day response.

7. Formally notify all current EDGE program participants of both the 10-year eligibility restriction review as well as the small business size standard review to prepare local business leaders for any forthcoming corrective actions.

8. Formally notify all State agencies of any forthcoming corrective actions and how these actions will affect the agencies' EDGE participation usage and credit.

9. Strongly consider a review of EOD staffing, budget, and tracking system upgrades to assist EOD with the collection, assessment, and enforcement of the MBE/EDGE/VBE program requirements and restrictions. EOD staff and tracking systems will continue to be strained with additional responsibilities from other EOD business enterprise initiatives.

10. Provide additional training to Ohio Department of Administrative Services, Equal Opportunity Division employees regarding EDGE program requirements and restrictions.

REFERRAL(S)

The Office of the Ohio Inspector General will provide this report to the Ohio Auditor of State's Office for consideration.

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL
RANDALL J. MEYER, INSPECTOR GENERAL

NAME OF REPORT: Ohio Department of Administrative Services

FILE ID #: 2018-CA00016

KEEPER OF RECORDS CERTIFICATION

This is a true and correct copy of the report which is required to be prepared by the Office of the Ohio Inspector General pursuant to Section 121.42 of the Ohio Revised Code.

Jill Jones
KEEPER OF RECORDS

CERTIFIED
February 12, 2018

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